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Case Comment: Ujyar Singh v The State of Madhya Pradesh: The Right of Private Defence

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INTRODUCTION: FACTS OF THE CASE

In this case¹, the dispute arises from the inheritance of 9 acres of land owned by Gulabrani, who had no sons and thus bequeathed the land to her daughter Kashibai, the wife of the first appellant, Ujyar Singh. This decision led to a disagreement among her other two daughters, Imrati and Rati Bai, who demanded their rightful share of the property. The conflict escalated due to the involvement of Kamal, the nephew of Gulab Bai's late husband, who supported Imrati and Ratibai's claim. Consequently, enmity developed between the first appellant, Ujyar Singh and Kamal.

On 03 March 2002 at 5:00 PM, the accused individuals assembled unlawfully with the common objective of murdering Kamal and causing grievous harm to Sudama, based on their prior enmity stemming from the land dispute. They attacked Kamal with various deadly weapons, including an axe, katarna, farsa, ballam and lathi, resulting in his death. The assault took place

¹ *Ujyar Singh v The State of Madhya Pradesh* (2018) SCC OnLine MP 1799

as Kamal Singh was en route to Kanhai Choudhary's field when he was intercepted and attacked by Ujyar Singh and others due to the previous land dispute. Ujyar Singh struck Kamal with an axe to the head, Karan Singh used a katarna on his head, Veeran and Sunder attacked him with farasa and ballam to his chest and Nandu delivered a blow to the naval region with Khabda.

When Kamal's cries for help were heard, Sudama rushed to intervene but was obstructed by Gulabrani, Kashibai and Halki Bahu. Ujyar Singh subsequently struck a fatal blow to Kamal's neck with the axe, partially severing it and causing his death. Ujyar Singh also struck Kamal's left arm, resulting in its severance. Even after Kamal's demise, the assailants continued to inflict blows on his legs and back using various weapons, including an axe, farsa and lathi. The incident was witnessed by several individuals including Raghuv eer Singh, Ghansa Singh, Sone Singh, Ajmer and Rajendra, who responded to the calls for help. In the aftermath of the incident, Sudama filed a report with the Bhatiyagarh Police Station and postmortem examination revealed a total of 18 incised wounds on Kamal's body.

ISSUE

Whether the appellants assaulted the deceased in the right of private defence i.e. Section 96² of the Indian Penal Code.

ARGUMENTS BY THE PARTIES

Arguments by the Prosecution: In the legal discourse surrounding the exercise of the right to private defence, various judicial precedents have been cited to elucidate the nature and scope of this legal concept. One such case, *Ranjitham v Basavaraj*³ was invoked by the Prosecution to exemplify the circumstances that precipitated the utilization of the right to private defence. It is important to note that the onus of establishing this plea rests upon the accused and this burden can be discharged by demonstrating a preponderance of probabilities favoring the plea. The factors under consideration include the injuries experienced by the accused, the level of

² Indian Penal Code 1860, s 96(4)

³ *Ranjitham v Basavaraj* (2012) 1 SCC 414

immediate threat to their safety, the injuries caused by the accused and the extent to which the accused had a reasonable opportunity to seek aid from public authorities.

Additionally, the Counsel referenced the case of *Extra-judicial Execution Victim Families Association v Union of India*⁴ to delve into the concept of proportionality concerning the defence employed. Furthermore, the case of *Darshan Singh v State of Punjab*⁵ was cited to establish that a mere reasonable apprehension is adequate to trigger the right of Private defence. Nonetheless, it is imperative to underline that the right of private defence does not translate into a license for retaliation; it is fundamentally a prerogative to protect oneself, devoid of vengeful motives.

Determining whether an excess of private defence, as articulated in the fourth clause of Section 99⁶, has transpired is inherently contingent upon the specific circumstances of each case. There is no universal template of conduct applicable in all instances. The pivotal consideration hinges on whether there existed a credible apprehension regarding life, property or grievous harm. Should such apprehension be substantiated, the right of private defence is legitimately invoked and the individual exercising this right is entitled to stand their ground and counteract the impending threat, as underscored by the precedent in *George Dominic Varkey v The State of Kerala*⁷.

Arguments by the Defence: The appellants have presented a case invoking the doctrine of private defence. Their account describes an encounter where they were returning from their agricultural field, transporting a harvest of grams in a bullock cart. Suddenly, Kamal, Sudama, Ajmer, Ghansu and Raghuveer confronted them, presumably due to a preceding land dispute. It is argued that the deceased, accompanied by the aforementioned individuals, attempted to seize the crop, leading to a confrontation. The appellants assert that Kamal brandished a firearm and discharged a shot which, fortunately, missed Ujyar Singh. In a bid to protect themselves, they retaliated against Kamal Singh and Sudama. Additionally, the appellants claim that Ujyar Singh, Veeran Singh and Sundar Singh sustained injuries during the same incident.

⁴ *Extra-judicial Execution Victim Families Association v Union of India* (2016) 14 SCC 536

⁵ *Darshan Singh v State of Punjab* (2010) 2 SCC 333

⁶ Indian Penal Code 1860, s 99

⁷ *George Dominic Varkey v The State of Kerala* (1971) 3 SCC 275

Furthermore, it is contended that a day prior to this occurrence, a verbal altercation transpired between the deceased and Ujyar Singh, culminating in a formal report filed by the latter at the Batiyagarh Police Station.

DECISION BY THE COURT

The appellants' claim of acting in Private defence is contradicted by unchallenged evidence in the postmortem report. The report documents that the deceased sustained 18 severe injuries, indicating a brutal and gruesome crime. In contrast, the injuries found on the accused individuals were relatively old and simple, caused by blunt objects. There is no mention of any weapon other than a firearm used by the deceased, making it highly improbable that these injuries resulted from the same incident.

The appellants' narrative that Kamal and Sudama attacked them while attempting to take away the gram crops they were transporting in a bullock cart and that they retaliated when Kamal fired a gunshot, is contradicted by the crime scene details. Notably, no gun or bullock cart loaded with crops was found at the scene, as corroborated by the crime scene details. Additionally, there is no evidence to support the claim that the deceased was armed with a firearm and discharged it. In this context, the accused individuals appear to have been the initial aggressors. Consequently, the right of private defence does not apply to the appellants. To establish the right of private defence, the appellants must present material from the record, either through their own evidence or by extracting pertinent facts from prosecution witnesses. However, there is no record of reasonable grounds for the appellants to anticipate the infliction of death or grievous harm by the deceased, Kamal. Well-established legal principles dictate that the right of private defence is unavailable to an individual who initiates aggression.

Based on the aforementioned examination of the evidentiary material and in alignment with the legal precedents established by the Apex Court, the appellants' commission of the offense has been conclusively established. The trial court aptly considered the statements of witnesses and the documented evidence in rendering a verdict of guilt against the appellants. Consequently, no legal irregularity or perversity is discernible in the trial court's verdict. Therefore, the appeal

filed by the appellants is devoid of merit and is hereby dismissed. The convictions of all appellants are upheld and affirmed.

ANALYSIS

The legal provisions pertaining to the right to private property and personal defence in India are outlined in Sections 96⁸ to 106⁹. The aforementioned legal framework grants individuals the authority to use their right to private defence alone in situations where they lack recourse to governmental protection. The concept of 'Reasonability' plays a crucial role in establishing the foundation of the right to private defence. The breadth of an individual's right to private defence is not determined solely by the gravity of the threat, but rather by the logic of their apprehension over the imminent risk.

The foundational principle of Section 96¹⁰ of the Indian Penal Code is the assertion that an act shall not be considered an offence if it is carried out within the scope of the right to private defence. In the meantime, Section 97¹¹ elaborates on the entitlement to exercise private defence in relation to safeguarding one's physical well-being and personal possessions. Section 102¹² of the legal framework expounds upon the initiation and perpetuation of the entitlement to the private defence of the physical person. It asserts that the right of private defence is activated promptly with the emergence of a rational perception of peril, irrespective of whether the transgression has been perpetrated.

In the case of *Kala Singh*¹³, a profound illustration of the application of this legal framework emerges. The deceased possessed a formidable and menacing character, having previously engaged in a physical altercation with the accused, during which he had overpowered and physically harmed the accused. In response to a subsequent threat, the accused, fearing for his life, wielded a light hatchet and delivered three blows to the aggressor's head, resulting in the

⁸ Indian Penal Code 1860, s 96

⁹ Indian Penal Code 1860, s 106

¹⁰ Indian Penal Code 1860, s 96

¹¹ Indian Penal Code 1860, s 97

¹² Indian Penal Code 1860, s 102

¹³ *Kala Singh and Ors v State of Punjab* (1997) CriLJ 1313

latter's demise. The court deemed the circumstances to evoke a genuine and rational apprehension of danger in the accused's mind, justifying the exercise of his right to private defence.

A cardinal principle in this context is articulated negatively, emphasizing that the force employed in defence must not be excessive, as would be perceived by a reasonable person in relation to the perceived risk. Furthermore, the force employed must be reasonable and commensurate with the potential harm posed.

In addition to the cases presented in the prosecution's argument, it is instructive to examine additional cases for a comparative analysis. In *Yogendra Moraji v State*¹⁴, the Supreme Court delved extensively into the scope and limitations of the right to individual bodily defence. Notably, the court underscored that, in a scenario involving an imminent threat to life or serious bodily harm, the only viable course of action that ensures safety is one resulting in the assailant's death. This perspective has raised questions, as it appears to prioritize retreat over defence, seemingly contradicting the principle that the law does not reward cowardice on the part of the victim. In *Darshan Singh v State of Punjab*¹⁵, it was affirmed that an individual should not resort to cowardice and private defence should be the primary means to assert one's social rights.

Moreover, the accused must employ no more force than necessary to safeguard their person or property when acting in private defence. Notably, the burden of proving the existence of the right of private defence does not rest upon the accused beyond a reasonable doubt. In situations where an individual faces an immediate and substantial risk of losing life or limb, they are legally empowered to inflict any necessary harm, including death, upon the assailant, whether the assault is being attempted or explicitly threatened. An illustrative instance in *Mohinder Pal Jolly v State of Punjab*¹⁶ illustrates that this clause does not protect an individual when there is no reasonable expectation of death or grievous bodily harm, as in the case of a factory owner who, facing a barrage of brickbats from outside the gates, fatally shot a worker with a handgun.

¹⁴ *Yogendra Moraji v State* (1980) 2 SCC 218

¹⁵ *Darshan Singh v State of Punjab* (2010) 2 SCC 333

¹⁶ *Mohinder Pal Jolly v State of Punjab* (1979) SCR 2 805

The rights of private defence should be exercised without any gap between the action of the aggressor and the defence.¹⁷ The ruling in the case of *K M Nanavati v State of Maharashtra*¹⁸ (referred to as 'Nanavati') elucidates that a temporal gap between the provocation and the subsequent lack of self-control would nullify the causative connection between these two factors. This interpretation would suggest that the individual in question regained their ability to exercise self-regulation. Therefore, it is imperative that the application of BWS be limited to cases involving grave and unexpected provocation. According to current legal statutes, in order to qualify for the exception, the provocation must be characterised by its sudden and immediate nature.

In *Subramani v State of Tamil Nadu*¹⁹, the question of common intention to differentiate between a criminal act and private defence was answered. In cases where it is established that the accused possessed the legal entitlement to exercise the right of private defence and had a reasonable belief that refraining from exercising this right would result in death or severe bodily harm, the right of private defence of property, as outlined in Section 103²⁰, may be extended to include the intentional causing of the aggressor's death. However, it is important to note that this extension is subject to the limitations specified in Section 99²¹. In this particular scenario, if the individuals in question engaged in actions as a means of exercising their entitlement to the private defence of property, it would be inappropriate to assert that they perpetrated a criminal act with the intention of advancing a shared objective. This is due to the explicit provision outlined in Section 96, which unequivocally states that any action carried out in the exercise of the right of private defence is not considered an offence. The individuals in question did not possess any intention to engage in any illegal activity or partake in any actions that may be characterised as against the law. The primary intention of the individuals involved was not to cause the death of the dead but rather to safeguard their own possessions. It is possible that, in a certain scenario, it could be determined based on the available evidence that certain

¹⁷ Keerthana Medarametla, 'Battered Women : The Gendered Notion of Defences' (2017) 13(2) Socio-Legal Review <<https://repository.nls.ac.in/slr/vol13/iss2/2/>> accessed 13 September 2023

¹⁸ *K.M. Nanavati v State of Maharashtra* (1962) Supp (1) SCR 567

¹⁹ *Subramani v State of Tamil Nadu* (2002) 7 SCC 210

²⁰ Indian Penal Code 1860, s 103

²¹ Indian Penal Code 1860, s 99

individuals may have surpassed the boundaries of their right to private defence. Consequently, these individuals may be held personally accountable for their actions. However, it cannot be asserted that the act of murder was carried out in accordance with a shared intention to execute this offence. The appellants' primary objective was not to bring about the demise of the dead; rather, they had engaged in their actions as a means of exercising their entitlement to private defence. When engaging in the exercise of the right of private defence, it cannot be argued that the appellants were driven by a collective intention to conduct a criminal act. The concept of common intention pertains solely to the commission of an infraction and does not extend to the exercise of the right to private defence.

CONCLUSION

The right to private defence is a legal provision accessible to Indian people, although it is often misused or employed for unethical or unlawful purposes. The court is responsible for ascertaining whether the exercise of the right was conducted in a bona fide manner. The extent to which the privilege of private defence can be exercised is contingent upon the presence of a legitimate apprehension of damage, rather than the actual existence of such a threat. There are just a few situations in which a restricted expansion of this privilege is permissible. It is imperative to employ the minimal level of force necessary to halt the assault.

According to the court's ruling²², it was determined that the appellants were the ones who instigated the aggressive behaviour and were unable to provide sufficient evidence to support their claim of a legitimate fear of harm. Consequently, the assertion made by the individuals regarding their actions being in private defence was ruled unsustainable. The appellants' convictions, which were based on different sections of the Indian Penal Code²³ and the Arms Act²⁴, were affirmed.

²² *Ujyar Singh v The State of Madhya Pradesh* (2018) SCC OnLine MP 1799

²³ Indian Penal Code 1860

²⁴ Arms Act 1959

The court's ruling²⁵ in this instance underscores the significance of upholding the norms of proportionality and reasonableness in the exercise of the right to private defence. This statement serves as a reminder that the utilisation of private defence should be seen as a final course of action, rather than a justification for engaging in retaliatory measures. The judgement highlights the importance of conducting a comprehensive analysis of evidence and adhering to legal standards to ensure the administration of justice.

²⁵ *Ujyar Singh v The State of Madhya Pradesh* (2018) SCC OnLine MP 1799